



IN THE MATTER OF: THE BERRY'S CREEK STUDY AREA U.S. EPA Index No.II-
CERCLA-2008-2011

Joe Alessi

to:

Clay Monroe

11/11/2009 01:03 PM

Cc:

"Jay Hanus", Tomchuk.Douglas, JHanson, "Angelo C. Morresi"

Hide Details

From: "Joe Alessi" <jalessi@alessilaw.com>

To: Clay Monroe/R2/USEPA/US@EPA,

Cc: "Jay Hanus" <Jay@insulfab.com>, <Tomchuk.Douglas@epamail.epa.gov>,

<JHanson@bdlaw.com>, "Angelo C. Morresi" <amorresi@aol.com>

2 Attachments



EPA Notice Letter October 13 2009.pdf Monroe email letter 111109.doc

Dear Mr. Monroe:

Attached please find letter confirming the December 10, 2009 extension in the above referenced matter.
Joe Alessi

Joseph H. Alessi LLC

Counselor at Law

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Via email only Monroe.Clay@epamail.epa.gov

November 11, 2009

Mr. Clay Monroe
Assistant Regional Counsel
USEPA – Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

RE: IN THE MATTER OF:
THE BERRY'S CREEK STUDY AREA
U.S. EPA Index No.II-CERCLA-2008-2011
Notice of Potential Liability and Request to Perform RI/FS
(the "Notice")

Dear Mr. Monroe:

This is to confirm our conversation yesterday November 10, 2009. As you know I am an attorney for Insulfab Plastics, Inc. ("Insulfab" or "Client"). My Client received the Notice on or about October 13, 2009 from Raymond Basso, Strategic Integration Manager. I have attached hereto a copy of the Notice for your convenience. Along with the Notice my Client received the Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study Berry's Creek Study Area ("Settlement Agreement and Order"). On or about November 4, 2009 my paralegal Diane contacted you and requested the attachments to the Settlement Agreement and Order, which were not sent to my Client, i.e. Appendix "A" List of Respondents; Appendix "B" Settlement of Work; Appendix "C" Map of Site; Appendix "D" Trust Agreement. Shortly thereafter you forwarded to her Appendices "A", "B" & "D". Yesterday I requested that you forward to the undersigned Appendix "C", the Map of the Site. I am in receipt of same and thank you very much for your quick response.

Due to the fact that I did not receive a complete set of the Appendices until yesterday I requested an extension until December 10, 2009 to respond to the Notice and the RI/FS (30 days from receipt of all of the documents). This is to confirm that you have agreed to the December 10th extension.

Please be advised that while I am the General Counsel for Insulfab Plastics, Inc. I will be working on this matter with Angelo C. Morresi, Esq., an environmental attorney. Mr. Morresi's office is located at 43 Bennet Avenue, Cedar Grove, New Jersey 07009, telephone number (973) 239-5626, fax number (973) 857-9778.

I thank you for your consideration and cooperation in this matter.

Very truly yours,

Joseph H. Alessi

JHA:td

Enc.

cc: Insulfab Plastics, Attn: Frank J. Hanus, III (Jay@Insulfab.com)
Douglas Tomchuk (Tomchuk.Douglas@epamail.epa.gov)
John Hanson, Esq., Representative of the PRPs (JHanson@bdlaw.com)
Angelo Morresi, Esq. (AMorresi@AOL.com)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1868

OCT 13 2009

URGENT LEGAL MATTER – PROMPT REPLY NECESSARY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank J. Hanus, III
Insulfab Plastics, Inc.
834 Hayne Street
Spartanburg, SC 29301

Re: Notice of Potential Liability and Request to Perform RI/FS Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., for the Berry's Creek Study Area, Bergen County, New Jersey

Dear Mr. Hanus:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threat of release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. Sections 9601-9675.

As you may know, EPA has documented the release and threat of release of hazardous substances into the environment at the Berry's Creek Study Area, Bergen County, New Jersey (the "Site"). In response to the release and threat of release of hazardous substances at the Site, EPA has spent public funds and anticipates spending additional public funds pursuant to CERCLA. Based on information presently available, EPA has determined that your company may be responsible under CERCLA for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

The Site is described as the Berry's Creek Study Area, which includes the water body known as Berry's Creek including the Berry's Creek Canal and the natural course of Berry's Creek, all tributaries to Berry's Creek from its headwaters to the Hackensack River, and wetlands that are hydrologically connected to Berry's Creek and/or its tributaries. The Berry's Creek Study Area also includes upland properties in the Berry's Creek watershed (as potential sources of contamination to the creek, but not for the purpose of detailed investigations of the upland areas themselves). Tidal portions of the Hackensack River and adjacent areas will also be studied, as necessary, to evaluate the ecological relationships and exchanges of contamination between these areas and the Berry's Creek Study Area.

Internet Address (URL) • <http://www.epa.gov>

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NOTICE OF POTENTIAL LIABILITY

Under CERCLA and other laws, responsible parties may be held liable for monies expended by the federal government in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial and enforcement actions. Responsible parties also may be subject to orders requiring them to take response actions themselves. Responsible parties under CERCLA include, among others, the current and past owners or operators of a facility from which there has been a release or threatened release of hazardous substances, persons that arranged for the treatment or disposal of hazardous substances which were sent to such a facility, and persons that transported hazardous substances to such a facility.

By this letter, EPA notifies you that it has reason to believe that your company or its predecessor owned or operated, or currently owns or operates, a facility which engaged in activities resulting in the release of hazardous substances to the Site, or arranged for the treatment or disposal of hazardous substances which may have come to be disposed of at such facility, and is accordingly notifying your company of its status as a potentially responsible party ("PRP") under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

REQUEST TO PERFORM REMEDIAL INVESTIGATION / FEASIBILITY STUDY ("RI/FS")

By this letter, EPA invites your company to enter into the settlement with EPA which provides for the PRPs to conduct the RI/FS required at the Site. The settlement is memorialized in an administrative order on consent issued by EPA under CERCLA (U.S. EPA Index No. II-CERCLA-2008-2011) (the "AOC"). A copy of the AOC (with the appended Statement of Work (SOW)) is enclosed. It contains an explanation of the work that will be required to implement the RI/FS. In addition, as explained below, EPA will be available to meet with you to discuss questions concerning the RI/FS.

Within thirty (30) days from the date of your receipt of this letter, please submit a letter indicating your company's willingness to conduct the RI/FS. Your letter should include the following elements:

1. A statement of your company's willingness to conduct the RI/FS, by signing on to the AOC; and
2. The name, address, phone number and e-mail address of the individual who will represent your company; and

If EPA does not receive a timely response, it will assume that your company does not wish to sign the AOC, or participate in the RI/FS. In such an event, EPA will take appropriate action at the Site which could include issuance of a Unilateral Administrative Order to your company under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring that it perform the RI/FS, or EPA may perform the RI/FS and pursue a cost recovery claim against your company pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

FINANCIAL CONCERNS/ABILITY TO PAY SETTLEMENTS

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs or performance of work at a site may be substantially limited. If you believe, and can document, that your company falls within that category, please contact Clay Monroe, Assistant Regional Counsel, in writing at the address provided in this letter. You will be asked to submit financial records including federal income tax returns as well as audited financial statements to substantiate your claim.

Also, please note that, because EPA has a potential claim against your company, it must include EPA as a creditor if it files for bankruptcy.

INFORMATION TO ASSIST POTENTIALLY RESPONSIBLE PARTIES

EPA will establish an Administrative Record that contains documents that serve as the basis for EPA's selection of a cleanup action for the Site. The Administrative Record files will be available to you and the public at the Superfund Records Center, located at EPA Region 2 offices in New York City. Please contact Douglas Tomchuk at (212) 637-3956 if you wish to arrange an appointment to review Site files.

PRP STEERING COMMITTEE

John Hanson, Esq. has served as representative of the PRPs in negotiations with EPA. EPA recommends that you reach out to the steering committee through Mr. Hanson, Esq. at (202) 789-6015 or JHanson@bdlaw.com.

Your response to the Notice contained in this letter, including your willingness to sign the AOC, should be sent to:

Douglas Tomchuk
Remedial Project Manager
USEPA - Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866

With a copy to:

Clay Monroe
Assistant Regional Counsel
USEPA - Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

EPA urges that your immediate attention and prompt response be given to this letter.

This notice is not being provided pursuant to the "special notice" procedures outlined in Section 122 (e) of CERCLA, 42 U.S.C. Section 9622 (e), because EPA does not believe that those procedures would facilitate an agreement or expedite the RI/FS for the Site.

RESOURCES AND INFORMATION FOR SMALL BUSINESSES

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at www.epa.gov. In addition, the EPA Small Business Ombudsman may be contacted at www.epa.gov/sbo. Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

If you have any questions regarding this Notice of Potential Liability and Request to Perform the RI/FS, or would like to discuss this matter with EPA, please call or have your attorney call Mr. Monroe at (212) 637-3142.

Sincerely yours,



Raymond Basso, Strategic Integration Manager
Emergency and Remedial Response Division

Enclosures

cc: Gwen Zervas, NJDEP
Rachel Layre, NJDOL



Office of Enforcement and Compliance Assurance

INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers (www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture
(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry
(www.ecarcenter.org)

Automotive Service and Repair
(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry
(www.chemalliance.org)

Construction Industry
(www.cicacenter.org or 1-734-995-4911)

Education
(www.campuserc.org)

Healthcare Industry
(www.hercenter.org or 1-734-995-4911)

Metal Finishing
(www.nmffc.org or 1-734-995-4911)

Paints and Coatings
(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing
(www.pwbrc.org or 1-734-995-4911)

Printing
(www.pneac.org or 1-888-USPNEAC)

Transportation Industry
(www.transource.org)

Tribal Governments and Indian Country
(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues
(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators (www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
www.epa.gov

Small Business Gateway
www.epa.gov/smallbusiness

Compliance Assistance Home Page
www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance
www.epa.gov/compliance

Voluntary Partnership Programs
www.epa.gov/partners

U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center
(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act
(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.
(www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers
(www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.
(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse
(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline
(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information
(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance Information Service also includes asbestos inquiries.
(1-202-554-1404)

Wetlands Helpline
(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman
(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage
(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy
(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy
(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

THE BERRY'S CREEK STUDY AREA

RESPONDENTS listed on Appendix A.

U.S. EPA Index No.
II-CERCLA-2008-2011

Proceeding Under Sections 104, 107,
122(a) and 122(d) (3) of the Comprehensive
Environmental Response, Compensation,
and Liability Act as amended
(42 U.S.C. §§ 9604, 9607, 9622(a),
9622(d) (3)).

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION AND FEASIBILITY STUDY
BERRY'S CREEK STUDY AREA

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Attachments

Appendix A - List of Respondents

Appendix B - Statement of Work

Appendix C - Map of Site

Appendix D - Trust Agreement

JOSEPH H. ALESSI, LLC

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(973) 239-7120

Via email only Monroe.Clay@epamail.epa.gov

December 8, 2009

Mr. Clay Monroe
Assistant Regional Counsel
USEPA – Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

RE: IN THE MATTER OF:
THE BERRY'S CREEK STUDY AREA
U.S. EPA Index No.II-CERCLA-2008-2011
Notice of Potential Liability and Request to Perform RI/FS
(the "Notice")

Dear Mr. Monroe:

As you may recall, I am an attorney for Insulfab Plastics, Inc. ("Insulfab" or "Client"). My Client received the Notice and was to respond to the EPA by December 10, 2009 as confirmed by my November 11, 2009 letter to you (a copy of which is attached.). Since receipt of the Notice, Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study Berry's Creek Study Area and various appendices my Client has been doing its due diligence to investigate the matter. Insulfab ceased doing business on the site in 1991 and in fact moved its operation to Spartanburg, South Carolina. The New Jersey property is owned by a third party. All of my Client's records are kept in their South Carolina location. I have been working diligently along with my co-counsel Angelo Morresi, Esq. and Insulfab employees at their Spartanburg facility to obtain all the pertinent records and information. Although we have uncovered some of the documents necessary to assist Insulfab in determining whether or not to enter into the settlement, we still need additional time to complete the process. The necessary information goes back several decades and as stated before it is located in South Carolina.

Additionally Mr. Morresi has been in contact with Mr. John Hanson, Esq., the representative of the Potentially Responsible Parties to obtain information about the site and the extent and/or the nexus of my Client's possible involvement. He also

Mr. Clay Monroe
Assistant Regional Counsel
USEPA – Region 2
December 8, 2009
Page 2.

spoke with Mr. Gravel an individual retained by Hanson to assist him. Mr. Morresi informed Hanson that we would be seeking more time to respond.

I respectfully request an additional 60 days to review the information uncovered and to find additional evidence so that we can give an informed and intelligent response. We are in the process of finding former employees and seeking files regarding the company's operations and coverage. I also left you a voicemail this afternoon to this affect.

Please advise at your earliest convenience. I thank you for your consideration and cooperation in this matter.

Very truly yours,

Joseph H. Alessi

JHA:td
Enc.

cc: Insulfab Plastics, Attn: Frank J. Hanus, III (Jay@Insulfab.com)
Douglas Tomchuk (Tomchuk.Douglas@epamail.epa.gov)
John Hanson, Esq., Representative of the PRPs (JHanson@bdlaw.com)
Angelo Morresi, Esq. (AMorresi@AOL.com)